ation, it would seem that the Washington court has taken the better view in construing the act to be a prohibition against only such transfers as would work to the detriment of the creditor. Hence it would seem that a transfer to a corporation in return for a stock should not be within the statute for the debtor's property remains the same in value.

CONTRACTS—AGENCY—WHEN HAS A BROKER PERFORMED SO AS TO BE ENTITLED TO A COMMISSION?—Plaintiff, a broker, sued for his commission under an agreement by the terms of which he was to find a purchaser for land on or before March 14, 1915. On March 10th, plaintiff mailed a notice to defendant's intestate stating that he had procured a purchaser, and the prospective purchaser sent to the vendor an unqualified acceptance of his offer. Other efforts were made by the broker and prospective purchaser to notify defendant's intestate that the purchaser was ready, willing, and able to buy on the terms specified. The facts indicated that failure to complete the transaction was caused through the evasions of the vendor. *Held,* plaintiff was entitled to recover on the ground that his letter mailed March 10th was notice to defendant's intestate and binding on him from the time it was deposited in the mail. *Lingquist* v. *Loble* (Montana, 1922), 204 Pac. 170.

The court seems to indicate that the acceptance mailed by the broker within the time specified was essential to his right of recovery, and numerous cases are cited holding that an acceptance is binding from the time it is mailed. It would seem, however, that this principle of contract is not applicable to this case. The broker has very few of the characteristics of an ordinary agent. The agreement between broker and vendor is ordinarily susceptible of either one of two interpretations. The broker may be in the position of one to whom the vendor has made an offer of a unilateral contract. The owner offers to pay a commission if the broker will perform certain acts, i. e. find a purchaser. The broker under this interpretation does not agree that he will find a purchaser. He may, however, accept the owner's offer and thus change it into a binding contract by the performance of the act stipulated, MECHEM ON AGENCY, (Ed. 2), § 2429, or the agreement may be construed as a bilaterial contract, 20 MICH. L. REV. 788. If the first interpretation is adopted, then finding a purchaser would seem to constitute a sufficient acceptance of the offer, notice being essential only as a condition subsequent. See *Brown* v. *Smith,* 131 Mo. App. 59; *Veale* v. *Green,* 79 S. W. 731; *Cf. Bishop* v. *Eaton,* 161 Mass. 496. However, if the contract between the principal and broker be construed as bilateral, then the question arises has the broker sufficiently performed his undertaking so as to be entitled to a commission and was notice as given in his letter of March 10th essential to his cause of action. Even under this theory, it would seem that the notice within the time specified was not material. The understanding was that he find a purchaser within the time who was ready, willing and able to purchase. Where the understanding was to sell land within a specified time, it was held that if the buyer was actually found within that time although not reported to the principal until afterward, the broker

might, nevertheless, recover, the principal not having been prejudiced by the delay, *Schramm* v. *Wolff*, (Texas, 1910), 126 S. W. 1185. But assuming that under the bilateral theory notice of performance within the time specified is essential, it is well established that when performance is prevented by the acts of the principal, the cause of action is not defeated. *Lundell* v. *Schultz*, 186 Ill. App. 245, WILLISTON ON CONTRACTS, § 677.

CONTRACTS—ILLEGALITY OF "TYING CLAUSES" IN A LEASE OF MACHINERY UNDER THE CLAYTON ACT.—Defendant, through its patents, controlled a very large portion of the business of supplying shoe machinery. Shoe machinery was leased to shoe manufacturers upon conditions, some of which were (1) that the machinery would be used only on shoes upon which certain other operations were performed on other machines of defendant; (2) that if lessee failed to use exclusively certain kinds of machines made by defendant, lessor could cancel all leases; (3) that lessee should purchase all supplies from defendant; (4) that lessee should buy all additional machinery of a certain class from defendant; (5) that royalty should be paid on all shoes operated upon by machines of competitors. In a suit by the United States to restrain the defendant from making leases containing such restrictions, *held*, such restrictions were invalid under § 3 of the Clayton Act which makes it unlawful for persons engaged in interstate commerce to lease machinery, whether patented or unpatented, upon condition that the lessee shall not use machinery of the competitors of the lessor, where the effect of such lease may be substantially to lessen competition or to tend to create a monopoly. *United Shoe Machinery Corporation* v. *United States*, U. S. Sup. Ct. Adv. Op., No. 119, Oct. Term, 1921.

In the absence of the statute, leases of machinery containing "tying clauses" similar to those enumerated above have been upheld. *United Shoe Machinery Co.* v. *Brunet* [1909], A. C. 330; *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32. But the court in the principal case decides that such restrictions are prohibited by the Clayton Act for, though "the clauses enjoined do not contain specific agreements not to use the machinery of a competitor of the lessor, the practical effect of these drastic provisions is to prevent such use." The defendants' chief defense was that the Act is an unconstitutional limitation upon the rights secured to a patentee and is therefore a taking away of property without due process. But the Supreme Court has formerly held that a patent confers upon the patentee only the exclusive right to make, use, and sell the invention and confers no privilege to make contracts in themselves illegal. *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502; *Standard Sanitary Mfg. Co.* v. *U. S.*, 226 U. S. 20.

CRIMES—MENS REA.—Defendant was indicted for having sold a derivative of opium in violation of the federal Narcotic Act of 1914, 38 STAT. 785. He demurred on the ground that the indictment failed to charge that he knew the derivative to be such. *Held*, the statute did not make such knowledge